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Report
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IMPROVED RETIREMENT AND DISABILITY
SYSTEM FOR CERTAIN EMPLOYEES OF THE
CENTRAL INTELLIGENCE AGENCY

Mr. Rivers of South Carolina, from the Committee on Armed Services,
submitted the following

R E P O R T

(To accompany H. R. 8427)

The Committee on Armed Services, to whom was referred the bill (H. R. 8427) to provide an improved retirement and disability system for certain employees of the Central Intelligence Agency, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of this bill is to provide an improved retirement and disability system for certain employees of the Central Intelligence Agency.

NEED FOR LEGISLATION

At the present time all employees of CIA are limited to the normal Civil Service Retirement benefits. On the other hand improved retirement benefits have been authorized for the Foreign Service and for certain personnel engaged in investigation and detection of crime and apprehension of criminals. However, many CIA employees serve under conditions which are at least as difficult and onerous as the conditions which led to improved retirement benefits for the Foreign Service and certain personnel of the FBI and other agencies. CIA employees who will come under this proposed system are obliged to serve anywhere in the world according to the needs of the Agency as is the case in the Foreign Service and the military and unlike the normal Civil Service employee. The need was stressed for the Agency to maintain a young service by encouraging earlier retirement and in some cases directing earlier retirement. The voluntary early retirement features of this bill will serve this end.

Since the Agency is unable in fact to provide full-term careers for many individual officers, it is necessary to minimize the adverse effects of the required programs of managed attrition and to preserve its ability to recruit and retain the high-caliber personnel it needs. Therefore, the Agency must make reasonable provision for the futures of those individuals who must be separated before completing a full-term career of thirty or so years.

NATURE OF LEGISLATION

It was determined that rather than attempt to devise an entirely new system the Agency would follow the precedent established in this field by the Foreign Service retirement legislation. Thus, H. R. 8427 authorizes the establishment of a separate integrated retirement system for a portion of the employees of the Agency which is comparable to that provided for the Foreign Service.

COMMITTEE DELETIONS

H. R. 8427 is a clean bill resulting from careful deliberations of this Committee after four days of hearings on H. R. 7216 which was the original bill referred to this Committee for consideration. That bill had as its primary purpose to establish an improved retirement system for a limited number of CIA employees. In addition, however, H. R. 7216 included a series of amendments of a technical nature to update the Central Intelligence Agency Act of 1949 and other provisions which would grant certain new authorities for the Agency. Early in the consideration of H. R. 7216, the Committee determined H. R. 7216 in its entirety was of such wide scope that it should be so revised as to limit it to those provisions relating to establishment of an improved retirement system

for certain CIA employees. It was believed that an improved retirement system was of paramount importance and that full attention should be given to this complex subject. Accordingly, H. R. 8427 does not include the following items which were present in H. R. 7216:

(1) Certain technical amendments designed solely to update code citations in the CIA Act of 1949 in connection with procurement authorities.

(2) Authorization to pay travel expenses of employees and members of their families from certain unhealthful posts to other locations abroad having better environmental conditions for purposes of rest and recuperation.

(3) Authorization to pay travel expenses for dependents accompanying an officer who is temporarily assigned to a training station while en route to his post of assignment.

(4) Authorization to provide appropriate orientation and language training to dependents in anticipation of an assignment abroad.

(5) Authorization to approve home leave upon completion of three years' service abroad and in certain cases to approve home leave after completion of eighteen months' service abroad.

(6) Authorization to pay certain travel expenses for employees and dependents to the nearest locality at which they could obtain suitable medical care.

(7) Authorization to pay costs of medical treatment for employees and dependents in certain circumstances.

(8) A provision entitling a person to reemployment in another Government agency upon completion of assignment with the Agency where the assignment was approved by the agency concerned and CIA.

(9) Authority for the Director to settle claims against the United States arising out of Agency activities abroad.

(10) Authority for the Director to receive gifts and administer them for the benefit or welfare of the Agency or its employees.

CREDIT FOR SERVICE AT UNHEALTHFUL POSTS

H. R. 7216 provided authority at Section 253 permitting extra service credit toward retirement for service at unhealthful posts. Upon review, it was the Committee's judgment in the light of previous Congressional action concerning similar benefits formerly credited the Military service, that such service credit is not appropriate. In consequence, this section has been stricken from the bill.

LIMITED NUMBER OF EMPLOYEES TO BE COVERED

During the hearings it was emphasized by the witnesses before

the Committee that this proposed retirement system would encompass only a portion of Agency employees and was intended to cover those who were engaged in the conduct and support of intelligence activities whose conditions of employment in many ways were substantially similar to those of Foreign Service officers. It was estimated that a maximum of only 30% of the Agency's employees would qualify for coverage under the proposed system. In view of the fact that the great majority of CIA employees will continue to be covered under the normal Civil Service Retirement system, the Committee amended the bill explicitly to provide in its statement of purpose and in section 201 (a) that the system would be "for a limited number of employees." In addition, the Committee amended the bill to include in the Short Title of section 101 that the system was only "for certain employees."

COMMITTEE AMENDMENTS

Consideration was given to inclusion of the Deputy Director of Central Intelligence within the meaning of "Director" in the definitions at section 111 (2). However, the Committee believed it more appropriate that the "Director" refer only to the Director of Central Intelligence recognizing that the Director appropriately could and would delegate certain of his authorities under the bill.

A new section 201 (c) was included to provide that determinations made by the Director under the provisions of this law would be deemed final and conclusive and not subject to review by any court. This was in

recognition of the fact that the security classification of information concerning the service of Agency employees and the facts pertinent to determinations made under the Act would ordinarily be of such a nature that they should not be publicly disclosed. This further recognizes the responsibility placed on the Director of Central Intelligence by section 102 (d) (3) of the National Security Act of 1947, as amended, to protect intelligence sources and methods from unauthorized disclosure. Thus, section 201 (c) provides as follows:

In the interests of the security of the foreign intelligence activities of the United States and in order further to implement the proviso of section 102 (d) (3) of the National Security Act of 1947, as amended, (50 U.S.C. 403 (d) (3)) that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, and notwithstanding the provisions of the Administrative Procedure Act (5 U.S.C. 1001 et seq.) or any other provisions of law, any determinations by the Director authorized by the provisions of this Act shall be deemed to be final and conclusive and not subject to review by any court.

Section 203 authorizes the Director to designate those employees who would be covered under the system. However, it was contemplated that, if upon review, an employee under the system was no longer in qualifying service, he would be removed from this system. It was the

Committee's view that an employee with long service with the Agency whose career is determined by the Director as being within the concept of qualifying service should have the right to remain under this retirement system for the remainder of his employment with the Agency upon completion of fifteen years' service. The Committee added an amendment which reads as follows:

Any participant who has completed fifteen years of service with the Agency and whose career at that time is adjudged by the Director to be qualifying for the system may elect to remain a participant of such system for the duration of his employment by the Agency and such election shall not be subject to review or approval by the Director.

The specific purpose of adding the phrase "and such election shall not be subject to review or approval by the Director" was to make it clear that the nonreviewable provisions of section 201(c) pertaining to determinations by the Director should not defeat the purpose of this amendment which was to vest a right in the employee to remain in the system after fifteen years' service.

The Committee, in the interest of clarity of intent, amended section 204(b) (1) and (2). These two paragraphs are set forth below with deletions in brackets and the additions underlined:

["/ (1) "Widow" means the surviving wife of a participant who was married to such participant for at least two years immediately preceding his death or is the mother of issue by ["such/ marriage to the participant.

["/ (2) "Dependent widower" means the surviving husband of a participant who was married to such participant for at least two years immediately preceding her death or is the father of issue by ["such/ marriage to the participant, and who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such participant.

The first sentence of section 221 (f) provides that an unmarried participant retiring under the Act may under certain conditions elect a reduced annuity and designate in writing a beneficiary to receive an annuity equal to 50% of his reduced annuity after his death. It was believed the right to designate a beneficiary should be limited. Therefore, the Committee amended this provision by requiring that such designated beneficiary must have an insurable interest (as that term is used in 5 U.S.C. 2259 (h) relating to such designations under the Civil Service Retirement Act) in the participant in order to be eligible to receive an annuity after the participant's death.

In connection with retirement for disability or incapacity under section 231, reference was made to a physical examination to determine disability. In the title of Part D and in section 231 (b), the phrase "physical examination" was amended to read "medical examination" to make it clear that it was intended that examinations could be for the purpose of determining either physical or mental illness.

Section 233, one of the most important sections in the Act as proposed, provided as follows:

Any participant in the system who is at least fifty years of age and has rendered twenty years of service may on his own application and with the consent of the Director be retired from the Agency and receive benefits in accordance with the provisions of section 221.

Since, under other provisions of the Act, creditable service can be allowed for prior civilian and military service, the Committee believed it desirable to require an individual to have at least five years of service with the Agency in order to be eligible to retire under this section.

Consequently, the Committee added an amendment as follows: "provided he has not less than five years of service with the Agency." The Committee was also mindful of the requirement that the employee must apply for this

retirement and receive the consent of the Director in order to be retired. The Committee viewed this section in its entirety to provide for the retirement of such an individual under circumstances of convenience for the individual and the Agency.

Section 234 specifies the benefits in the event of discontinued service retirement. One of the key features is paragraph (c) which authorized the Director to retire participants in grade GS-14 and above "to promote the efficiency of the Agency." The Committee was of the view that the words quoted did not serve a useful purpose and, consequently, those words were deleted. Paragraph (c) further provided that participants in grade GS-14 and above when so retired would receive an immediate earned annuity. The Committee believed that there should be minimum periods of service before such individuals could be eligible to receive an immediate annuity. Therefore, the Committee added the following amendment: "provided they have in each case, not less than five years of qualifying service and a total of ten years of service with the Agency." The words "qualifying service" were intended to encompass that type of service which the Director determines to be of a nature which would qualify the individual to become a participant in the system. If an individual of grade GS-14 and above were so retired and did not meet the requirements

of the Committee's proviso, such individual then would receive benefits in accordance with the formula authorized for individuals similarly retired but in grade GS-13. The Committee believed this situation should be made explicit and, consequently, added the following sentence at the end of paragraph (c): "Any individual so retired who does not meet these service requirements shall receive the benefits provided for individuals in grade GS-13 as set out in paragraph (d) of this section." In line with the reasoning set forth above, the Committee also deleted the words "to promote the efficiency of the Agency" in paragraph (d) relating to the retirement by the Director of participants in grade GS-13 and below.

TAX EXEMPTION FOR DISABILITY ANNUITIES

H. R. 7216 included a provision which would have exempted from gross income for Federal tax purposes a disability annuity awarded under section 231. This specific section is set forth below:

Paragraph (4) of section 104(a) of the Internal Revenue Code of 1954 (26 U. S. C. 104(a)(4)) (relating to the exclusion from gross income of compensation for injuries and sickness) is hereby amended to read as follows:

"(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the

Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081; 60 Stat. 1021), or as a disability annuity payable under title II of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403(a) et seq.)."

The House Ways and Means Committee has not had the opportunity to complete appropriate action on this provision which would amend the Internal Revenue Code of 1954. Consequently, the Committee has deleted this provision pending further action by the House Ways and Mean Committee.

COSTS

There will be certain increased costs for the administration of the retirement system. For reasons of efficiency and security, it is considered essential that full administration of the program be accomplished within the Agency. It is estimated that this cost would approximate \$85,000 per year by the end of the first five years. Program costs cannot be precisely estimated. However, the additional annuity costs under the proposed

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